



June 7, 2001

Ms. Pamela Smith
Assistant General Counsel
Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2001-2386

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148110.

The Department of Public Safety (the "department") received a request for the training records of a certain department trooper, including 1) all records regarding the trooper's training to become a licensed peace officer with the department, 2) all duty and discipline records regarding the trooper, and 3) all "non-privileged personnel records." You inform us that the department is prepared to release "all of the relevant information" in the department's possession with the exception of certain information contained in the trooper's personnel file and in administrative inquiry files. You claim that portions of the requested information are excepted from disclosure under sections 552.026, 552.101, 552.114, 552.119 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You have highlighted driver's license numbers and license plate numbers in Exhibit A which are excepted from disclosure under section 552.130 of the Government Code. This office recently issued Open Records Letter No. 2001-2047 (2001), which serves as a previous determination under section 552.301(a) of the Government Code for the department with respect to section 552.130. Therefore, pursuant to that previous determination, you must withhold the highlighted driver's license numbers and license plate numbers. Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, fact, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests).

Next, you claim that the information in Exhibit B is excepted from disclosure under section 552.101 of the Government Code and common law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public under common law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

This office has found that an individual's personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). Because Exhibit B is a report of personal financial information not relating to any transactions between the trooper and the department, we agree that the exhibit must be withheld in its entirety under section 552.101 and common law privacy.

You also assert that the information in Exhibit C contains educational records protected by sections 552.026 and 552.114. Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

It appears that you are invoking the protection of the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990). FERPA provides that no federal funds will be made available under any applicable program to *an educational agency or institution* that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. See 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are *maintained by an educational agency or institution* or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Because the department is not an educational agency or institution, sections 552.026 and 552.114 and FERPA are inapplicable. The information must therefore be released, with the exceptions noted below.

Exhibits A and C contain information excepted from disclosure under section 552.117(2) of the Government Code. Section 552.117(2) excepts from disclosure the current or former home address and home telephone number, social security number, and information that

reveals family member information of peace officers.¹ See Gov't Code § 552.117(2); Open Records Decision No. 622 (1994). Thus, you must withhold the information we have marked under section 552.117(2).

The videotape from the department's administrative inquiry records contains recorded images of department troopers, which are excepted from disclosure under section 552.119 of the Government Code. This office has recently issued a decision in Open Records Letter No. 2001-2029 (2001), which serves as a previous determination under section 552.301(a) of the Government Code for the department with respect to section 552.119. You inform us that none of the exceptions to section 552.119 confidentiality are present. Therefore, pursuant to that previous determination, you must withhold those portions of the videotape depicting images of peace officers under section 552.119. Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, fact, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests).

In summary, pursuant to the previous determination in Open Records Letter No. 2001-2047, you must withhold the highlighted driver's license numbers and license plate numbers in Exhibit A under section 552.130. You must withhold all marked information in Exhibits A and C under section 552.117(2). You must withhold Exhibit B under section 552.101 and common law privacy. Pursuant to the previous determination in Open Records Letter No. 2001-2029, you must withhold all images of peace officers in the administrative inquiry videotape under section 552.119. The remainder of the information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

¹Peace officers are defined by article 2.12 of the Code of Criminal Procedure.

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 148110

Enc: Marked documents

c: Mr. Gregory S. Simmons
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(w/o enclosures)